

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHRISTIAN L. GILBERT,

Plaintiff,

vs.

CHRISTOPHER M. JOHNSON, and  
CORDELL & CORDELL, P.C., a  
Missouri corporation;

Defendants.

**4:22CV3248**

**ORDER**

Plaintiff filed a complaint in the District Court of Lancaster County, Nebraska alleging legal malpractice and breach of fiduciary duty against his former attorney, Christopher M. Johnson, and Johnson's law firm, Cordell & Cordell, P.C. Plaintiff alleges Johnson negligently represented him in a paternity, custody, and child support action ("underlying action"). ([Filing No. 1-2 at CM/ECF p. 4](#)). Defendants removed the present lawsuit to this forum, asserting this court has diversity jurisdiction pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. ([Filing No. 1](#)).

This court's review of the state court proceedings revealed the underlying action was appealed and that appeal is currently pending before the Nebraska Court of Appeals. See Kee v. Gilbert, A 22-317 (submitted without oral argument on March 7, 2023). On March 9, 2023, the court ordered the parties to show cause as to why the court should not stay these proceedings pending the outcome of the ongoing appeal in the underlying action.

Plaintiff did not file a response to the court's order. Defendants filed a response arguing that the court should issue a ruling on their motion to dismiss, ([Filing No. 4](#)), because it "does not implicate rights which are inextricably tied to the state court appellate proceedings." ([Filing No. 23 at CM/ECF p. 5](#)). Defendants contend that the legal basis for their motion to dismiss is unrelated to Plaintiff's assignment of errors in his state court appeal, and thus, the court should rule on that motion to prevent delay of the present proceedings. However, Defendants then argue that if the court were to deny Defendants' motion to dismiss, the matter should be stayed because the state court proceedings may affect the award of custody and child support order, issues which are relevant to the present case. *Id.* at 8.

Upon review of the underlying state court proceedings and Defendants' arguments, the court finds a stay of the current proceedings is warranted. The court's jurisdiction over this matter is dependent on a finding of federal diversity jurisdiction. And in establishing diversity jurisdiction, Defendants (and the court) calculated the amount in controversy based on the underlying action's award of attorney's fees and the child support order—issues currently under review in the state court proceedings. The underlying appeal undoubtedly has the potential to affect the allegations and amount in controversy in this lawsuit, and the proceedings should be stayed pending the conclusion of the state court proceedings, including the appeal.

IT IS ORDERED,

- 1) This case, including all deadlines and settings, is stayed pending further order of the court. The pending motions and objections are terminated and will be reopened after final resolution of the state court proceedings.

- 2) Beginning June 26, 2023, Plaintiff shall file a report on this court's docket which explains the current status of the pending state court proceedings. Plaintiff shall file a similar report every 90 days thereafter until the state court proceedings are complete.
- 3) The Clerk of the United States District Court for the District of Nebraska shall set an internal case management deadline of June 26, 2023.

Dated this 28th day of March, 2023.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge